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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Assessment and Collection of
Regulatory Fees for Fiscal Year 1995

MD Docket
No. 95-3

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF ARCH COMMUNICATIONS GROUP

Arch Communications Group ("Arch"), by its attorneys, hereby submits reply comments in response to the Commission's Notice of Proposed Rulemaking on the assessment and collection of regulatory fees for fiscal year 1995.^{1/} In reply, the following is respectfully shown:

I. STATEMENT OF INTEREST

1. Arch holds numerous Part 22 (Public Mobile) and Part 90 (Private Mobile) authorizations for

^{1/} In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, FCC 95-14, released January 12, 1995 (the "Notice").

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paging stations throughout the United States. Arch is concerned that the proposed fee increases will disproportionately fall upon paging carriers. A review of the comments filed in this proceeding reveals general opposition to the Commission's current fee proposal for Commercial Mobile Radio Service ("CMRS") licensees.^{2/} Arch wishes to take this opportunity to support these commenters and add its voice of opposition to the proposed fee increases.

II. THE COMMISSION CANNOT AND SHOULD NOT
ASSESS FEES ON A PER "UNIT" BASIS
RATHER THAN A PER "SUBSCRIBER" BASIS

2. The Commission should assess regulatory fees for CMRS licensees on the basis of the number of subscribers to a paging carrier service, rather than on the number of units in service. This is the method prescribed in the statute.^{3/} The Schedule of Fees

^{2/} Comments expressing the concerns of CMRS licensees were filed by the following parties: AirTouch Paging ("AirTouch"), Alltel Mobile Communications ("Alltel"), Century Cellunet, Inc. ("Century"), Frontier Cellular Holding Inc. ("Frontier"), MobileMedia Communications, Inc. ("MobileMedia"), and Personal Communications Industry Association ("PCIA").

^{3/} See 47 U.S.C. § 159(g); see also comments by Frontier at p. 3.

contained in 47 U.S.C. § 159(g) states that CMRS licensees must pay an annual fee of \$60 per 1,000 subscribers. Thus, Congress specified that these fee assessments are to be made on a per subscriber basis. The statute makes no reference to assessments or payments based on "units." In fact, PCIA correctly notes that Congress must have affirmatively determined that a subscriber based fee was most appropriate for CMRS because it differs from the fee basis adopted for certain other common carrier services.^{4/}

3. The Commission has proposed to change the basis for assessing fees from a per subscriber to a per unit basis. However, as the comments of MobileMedia note, the Commission has not cited any authority under the Budget Act which vests it with the power to substitute units for subscribers. PCIA notes that, while the Commission does have some authority to adjust the fee schedule, the proposed adjustments do not fall within this authority. Revisions of the fee schedule by the Commission must be in accordance with 47 U.S.C.

^{4/} For example, Congress decided to assess fees in the Domestic Public Fixed and the International Public Fixed Service on a per call sign basis. It did not opt to do this for paging carriers.

§ 159(b), which permits certain "mandatory" and "permitted" adjustments. The Commission has proposed to revise its method for calculating fees for CMRS as a "permitted" amendment.^{5/} However, PCIA argues that the change from subscriber to unit based fees cannot be considered a "permitted" change of the fee schedule.

4. When making amendments to a fee schedule, Title 47 U.S.C. § 159(b)(3) states that the Commission shall "add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law." The proposed revision is not an addition or deletion of the paging service. And, PCIA demonstrates that the proposed revision cannot be considered a "reclassification" of paging services because there have not been any changes in the nature of paging services which would warrant reclassification since Congress enacted the fee schedule.^{6/}

5. Accordingly, Arch supports the comments submitted by MobileMedia, PCIA and others which

^{5/} See Notice at ¶ 13.

^{6/} See PCIA comments at 7.

conclude that the Commission had no legal basis to change the statutory framework. Arch urges the Commission to continue to calculate regulatory fee assessments for Public Mobile licensees using the number of "subscribers" rather than "units."

III. THE PROPOSED \$0.13 PER UNIT FEE IS
AN ARBITRARY AND EXCESSIVE INCREASE

6. The amount of money that must be raised by regulatory fees for Commission activities has almost doubled from last year. Fee increases are therefore unavoidable. Nonetheless, many of the comments have noted that the increase which has been proposed for the paging industry and mobile services is disproportionately large. PCIA notes that the fee increase is anywhere from five to ten times more than fees paid in the last fiscal year.^{7/} Arch has estimated that its regulatory fee payment will increase by 1115 percent.^{8/}

^{7/} See PCIA comments at 4.

^{8/} Last year Arch paid \$5,585 in fees. It estimates that it will pay \$67,860 in fiscal year 1995 if the Commission's proposed fee schedule is adopted.

7. Not only is the Commission's proposed increase unusually large, but there also is no rationale offered to justify it. The Notice does not indicate that the fee increase is required to compensate for an increased level of enforcement, policy, rulemaking, or user information activities by, or for, Part 22 paging licensees.^{9/} In fact, as PCIA's comments have noted, the paging industry is competitive and increasingly deregulated, so paging operators receive only a limited benefit from the Commission's regulatory activities.^{10/} Accordingly, the Commission has little basis for arguing that CMRS licensees will consume an amount of the Commission's regulatory time and resources to justify the huge increase in fees charged to these licensees. Significantly, the Commission has offered no justification for imposing this disproportionate increase on Part 22 paging licensees. It simply states:

"... we believe that a more equitable payment formulation would require each licensee to submit a fee based upon the total number of telephone numbers or call signs that it provides to customers so that its fee payment

^{9/} See Id.

^{10/} See PCIA comments at 3.

would better reflect the benefit that the licensee receives from its use of frequencies of communications."^{11/}

Arch concurs with the comments of PCIA and others who argue that a fee increase of this magnitude disproportionately burdens paging licensees and therefore requires a more explicit justification.

8. Arch also supports the comments of AirTouch which note that the proposed fee increase will impose an especially heavy burden on paging carriers that utilize resellers to distribute their services. This result will occur because the new fee structure will require paging licensees to pay regulatory fees for each reseller unit. AirTouch correctly observes that carriers often will not be able to pass new fees on to resellers because the business is so competitive. Arch urges the Commission to consider the adverse effect this could have on paging carriers.

IV. THE COMMISSION SHOULD REVIEW THE METHODS USED TO CALCULATE CMRS FEES

9. Several commenters raise questions about the methods used to calculate the proposed regulatory

^{11/} Notice at ¶ 44.

fees. For example, Century Cellnet ("Century") argues that the proposed fee schedule is based upon an inaccurate estimate of cellular and Public Land Mobile units. Century notes that the Commission reached the \$0.13 fee by dividing a cost allocation of approximately \$4,420,000, by the number of units across which the cost allocation would be spread. Century persuasively argues that the Commission underestimated the number of payee units, resulting in an inflated fee to be paid by each licensee. The Commission estimated the number of payers at 34 million.^{12/} However, Century notes that CTIA released mid-year survey data estimating 24 million cellular subscribers by the end of 1994. And the February 27, 1995, issue of Communications Daily reported that the cellular industry commemorated the signing of its 25 millionth customer with a ceremony on Capitol Hill. Similarly, PCIA estimated there would be 24.5 million paging subscribers by the end of 1994. Although these figures are estimates, the magnitude of the difference suggests that the Commission may have greatly underestimated the number of units to which these fees will be applied.

^{12/} See Notice at ¶ 44 and Appendix G.

Accordingly, Arch supports Century in urging that the fee calculations be reexamined to ensure that the fees for public mobile services and cellular are calculated and distributed in the most equitable manner.

10. In addition, PCIA raises the question of whether the Commission has "inadvertently double-counted in determining regulatory and application processing activities."^{13/} PCIA notes that the Commission has not provided sufficient information to allow it to confirm the Commission's analysis.

V. CONCLUSION

11. Arch believes that the Commission lacks the legal authority to make the proposed changes to the regulatory fee payment scheme. And even if the Commission is found to have this authority, Arch believes that the proposed fees are unduly large, unjustified and disproportionately burdensome to paging carriers. For the foregoing reasons, Arch urges the Commission not to adopt the proposed changes to the

^{13/} See PCIA comments at 11.

regulatory fee payment scheme for Public Mobile
licensees.

Respectfully submitted,
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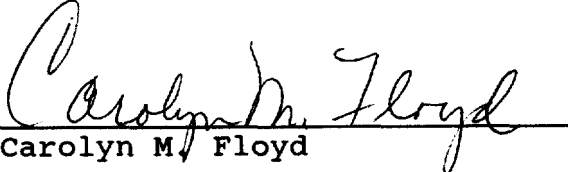
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